

STAFFORD COUNTY
PURCHASE OF DEVELOPMENT RIGHTS
COMMITTEE MINUTES
September 23, 2008

The meeting of the Stafford County Purchase of Development Rights Committee for Tuesday, September 23, 2008, was called to order at 7:00 p.m. by Chairman Tom Coen in the County Administration Conference Room.

Members Present: Coen, Apicella, Clark, McClevey, Kurpiel and Silver

Members Absent: None

Staff Present: Neuhard, Baker, Stinnette, Schultis and Smith

2. Staff Update

a. Report on Presentation to Board of Supervisors

Mr. Neuhard suggested since the report was concerning the presentation to the Board, Mr. Coen and Ms. Kurpiel would like to give their views.

Mr. Coen stated, in his opinion, the presentation went well. He stated Ms. Kurpiel did an excellent job with the PowerPoint presentation. He stated Mr. Brito and Mr. Milde had praise for the Committee. He stated Mr. Sterling asked several questions concerning the PowerPoint. He stated he felt the Board was interested in what the Committee was trying to do for the community.

Mrs. Kurpiel stated the last question the Board asked was concerning the time limit for a decision to be made. She stated the Board was told August 2009 but suggested the date be changed to as soon as possible because, in her opinion, it would influence the strategy and methodology the Committee would use going forward. She stated she asked for that to be put on the agenda.

Mr. Coen stated it was.

Mr. Apicella asked about the decision to go ahead with the bond referendum.

Mr. Neuhard stated currently there was a bond referendum for roads on the ballot in November. He stated at the same time the Board directed staff to undertake the road bonds they also instructed staff to look at the parks bond. He stated Bonnie Frantz, of the bond counsel, indicated that the County would not forward the park bond to the Circuit Court until the road bond was on the ballot. He stated the reasoning behind that thought was because there were a number of changes in the resolution for the roads and wanted to make sure the Circuit Court was not confused and mix up the two bonds. He stated the park bond will be sent to the Circuit Court after November. He stated McGuire Woods prepared some information concerning the general obligation bond process which was specific to the bonds for the PDR, but general to all bonds. He handed out the information to the Committee and discussed the information provided. He stated it was safe to say the Committee must be done by August 2009 to have the bond on the November ballot. He stated he thought the earliest the information could be on the Board agenda would be January. He stated bond counsel would have to be brought in and the Committee would have to formulate the question and provide a draft. He stated a resolution would have to be prepared for the Board and the bond counsel would take it to Circuit

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Court. He stated this was not like the road or parks bonds and it was important the question was structured in such a way that it was very descriptive and would give the voter an understanding of what was being done. He stated the Committee would have to develop what type of information would be sent out after the Board passed the request. He stated what he understood Ms. Kurpiel said was, the sooner the Committee had things done, the better.

Ms. Kurpiel stated it would make a difference in how the Committee would roll the million dollars.

Mr. Neuhard stated there were a number of influences that may have some impacts on the direction of the Committee. He stated some of the questions were what would happen if the road bond does not pass. What would happen with the CIP and the other borrowers? He stated the Commission could ask staff to put the PDR bonds on the Board Agenda as an item for their consideration when they were working on CIP. He stated in the presentation to the Board, the Committee stated this should be included in the CIP. He could not think of any reason why PDR discussion would not be proposed when the Board was discussing the new CIP, and that opportunity would come up in November. He stated as quickly as advice can be received from bond counsel, hopefully before summer, the Board would give their decision. He stated the Committee would get a further indication if the Board would entertain the proposal when they work on the CIP.

Ms. Kurpiel asked what the last date to commit the money the Committee currently has.

Mrs. Baker stated the Committee had until April 2010 to utilize the state match funds, which means the Committee would have to close on a property by that date.

Mr. Neuhard stated with the \$600,000 the Committee currently had, twenty units could be purchased. He stated if a pilot program was done, it was hopeful that program could be completed in eight months. He stated if the Committee wanted to do a pilot program, it could start in January and close in March. The Committee could evaluate the criteria in April and May and hopefully complete the pilot program by the end of summer. He stated he did not know how long it would take to negotiate twenty property rights, but hoped it would be complete by the end of summer.

Ms. Kurpiel stated in her opinion, it would take much longer. She stated the Committee did not have a proposed easement document approved for the program.

Mrs. Baker stated the Committee did have a draft document approved by the State.

After a brief discussion between Ms. Kurpiel, Mr. Neuhard and Mrs. Baker concerning the easement document, Mrs. Baker explained the easement document was drafted by the County Attorney's office and presented to the State for approval before the match funds were released. She stated she would be happy to get the Committee members another copy of the document and it should also be on the County website.

Mr. Coen asked what the Committee would need to do before November.

Mr. Neuhard stated the Committee would need to decide if they wanted to do the pilot program, and that decision would need to be made soon. He stated as far as the CIP was concerned, there was nothing the Committee would have to do, that would be left to staff to make sure it was programmed

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like it was presented in the proposal to the Board. He stated sometime after the first of the year we would make a presentation to the Board based on advice from bond counsel.

After some discussion between Mr. Silver and Mr. Neuhard concerning the need to do a pilot program, Mr. Silver stated if the Committee did not go forward with the pilot program, they could not take advantage of the state matching fund.

Mr. Neuhard stated that was correct.

Mr. Apicella stated, in his opinion, doing the pilot program would prove that the process would work.

Mr. Neuhard stated there would be lessons learned from the pilot program.

Mr. Silver stated there was a possibility the Committee could do the pilot program and secure the twenty development rights. He stated then the bond may not pass and the program would not be funded.

Mr. Neuhard stated that could be a possibility. He stated currently there was discussion in the Planning Commission concerning putting caps on the lot yield for property zoned A-1. He stated that may be something to watch over the next few months and think about the consequences of how any new land use policies or regulations might impact the PDR Program.

Mrs. Baker stated development yield for PDR rights and how the property would be allowed to subdivide were two different things. She stated it was tied in through the formula, and possibly would need to be changed.

Ms. Kurpiel asked what had changed in the A-1 zoning.

Mrs. Baker explained the Planning Commission was discussing an ordinance, much like Spotsylvania County, which has a cap on lot yield. She stated the Commission was also discussing allocated density.

Ms. Kurpiel stated, in her opinion, allocated density would not make a difference because the PDR Committee was already addressing that by removing right-of-way and hydric soils. She stated the Committee would need to talk in the future about the amount of money the Committee was proposing to pay for development rights and asked under what circumstances that dollar amount would change. She stated the discussion would be too complex to discuss at this time, and suggested it be discussed at a later date.

Mrs. Baker stated it would be based on property sales at a future date.

Mr. Coen asked, if the Committee was going to implement a pilot program in January, if that would interfere with the bond work.

Mr. Neuhard stated no, the ground work for getting it on the ballot has been done. He stated the Committee would have to have the questions proposed and the bond counsel would handle everything from that point.

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4. Unfinished Business

a. Pilot Program

Ms. Clark asked if there was a plan of how the Committee would get applicants starting in January.

Mr. Neuhard stated it would go back to the original plan discussed, which was putting the materials together and making choices of how it would be publicized. Would it be in the paper, sent to A-1 zoned property owners and how wide it should be distributed and holding at least one public meeting. He stated the word pilot would be on everything, with the indication of limited funding and the goal of the pilot program.

Mr. Coen stated to keep on track, did the Committee want to move forward to discuss the pilot program and then go back to the workshop, since they were discussion the pilot program now.

Ms. Kurpiel stated suggested the Committee continue the pilot program discussion

Mr. Neuhard asked the Committee for their advice, what did they think the risks were concerning moving forward with the pilot program. He stated the pilot program had been cleared through the County Administrator and it was a matter of insuring that was the direction the Committee wanted to take given the funds available.

Ms. Clark stated if the pilot program was not started, it may be the last chance to get the PDR program moving in Stafford County. She stated in her opinion, it was late in trying to same the amount of property the Committee wanted to save. She stated it would be better to have the twenty units than nothing at all.

Mr. Apicella stated by doing the pilot program it would give the Committee the chance to learn what they do not know at this point in time and refine the program to make it better and utilize the opportunity to move the program forward. He stated there was the risk of not having further funding, but at least twenty units would be saved.

Mr. Silver stated he agreed and did not see any reason to not do the pilot program.

Mr. Coen state he has always been for the pilot program. He stated it would allow the Committee to hear from potential applicants and know their thoughts.

Ms. Kurpiel stated she would like to discuss the strategy of working with the landowners. She stated everything she has heard suggests the importance of having a team work with the landowners because of the complexity of the issues. She stated there was a need for a Real Estate Attorney, a Tax Attorney, an Estate Attorney, an Appraiser and probable a Tax Credit Broker. She stated she did not know how many people you would need working with you and asked how the Committee communicates the complexity to the potential landowner.

Ms. Clark stated she had some concerns that the County did not have the money upfront, and people were going to donate their time and as part of a pilot program. She state, in her opinion, it would

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behoove the Committee to be involved or at least watch the interaction between the people to observe some of the issues that arise.

Ms. Kurpiel stated there was a conservation easement workshop for attorneys and accountants held in Fredericksburg today, and she learned there was an organization called Conservation Partners that would actually front the money for the expertise for interested landowners. She stated they do not provide the service for free and would be paid out of the tax credits the landowner would receive.

Mr. Apicella stated the applicant would also have some responsibility to be informed and do their own part in due diligence. He stated the Committee could steer them in certain direction, but it was their responsibility to make a good solid decision that was in their best interest.

Mrs. Clark asked if the professional names were listed in the brochure.

Mr. Neuhard stated a package would have to be compiled that not only had County information but also State information and maybe conservation easement information. He stated in the package it would be important to list resources and a letter which mentions due diligence on the landowners part. He stated some landowners may choose their own course of action while others may use the information we provide. He stated there would be a need for a package to be distributed to people that express interest in the program.

Ms. Kurpiel suggested the package be downloadable from the County website. She stated the Department of Conservation and Recreation (DCR) provides excellent starter documents and would like to include that information with the package.

Ms. Clark asked if at the conference today, was any indication given as to whom the applicant would call first out of the professionals.

Ms. Kurpiel stated that was not mentioned. She did say the appraisal was an important piece for the landowner so he could calculate his tax benefits. She stated in order for the landowner to take the tax benefits, the appraisal could not be more that sixty days old, according to the law.

Mr. Apicella asked if a checklist would be worthwhile for both the landowner and Stafford County.

Mr. Neuhard stated under the current system, the appraisal was not important. He stated the County issue was how many development rights.

Ms. Kurpiel stated to make this a successful program, the Committee must be sensitive as to what the landowner would be faced with.

Mr. Neuhard stated in his discussions with James City, he was told there were a number of applicants that when it came to the end, because they used the appraisal method, that fell through.

Ms. Kurpiel stated the Committee could provide a list of professionals and advise the landowners that somewhere through the process you might want to contact these professional or someone in this field to help with the decision process. She stated there was an accountant that only does accounting for conservation easements. She stated in speaking with the accountant, she mentioned the STRIPS to

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guarantee the payment for the loans over the next twenty years and paying tax free interest over that twenty year period. She stated the accountant asked what made the Committee think it would be tax free. Ms. Kurpiel explained in detail the information received from the finance office in speaking with Evergreen. She stated the accountant highly recommended that the Commission get a tax letter from Internal Revenue Service (IRS) that states "Stafford County, the program you propose and the documentation you will be using would make this interest tax free". She stated the accountant advised to not tell clients they would be in a program with tax free interest if an IRS letter can not be produced. She stated it was called a private letter ruling.

Mrs. Baker stated she thought the Committee would need to be careful and make the distinction that certain things presented were for the landowners' information to proceed and obtain the required information. She stated she did not want the County to be held liable because the Committee was not advising landowners on certain items.

Ms. Kurpiel stated the Committee would be advising that the landowner do their due diligence.

Mr. Coen stated it was his understanding that everyone was in favor of going ahead with the pilot program.

Mr. Neuhard stated staff will start the process which will include putting the package together and preparing the Board package. He stated the public meeting would be the end of January or early February.

Ms. Clark asked if the application had to be in by March.

Mr. Neuhard stated the end of March or April, unless the Committee felt six months was needed.

Ms. Kurpiel suggested a two step process. She stated the first step would be an indication of interest and an indication that the landowner would do due diligence for the purpose of letting the Commission know by the end of June that the applicant definitely wants to move forward. She stated, in her opinion, the process on the County side would not take much time once the application was received.

Mr. Coen and Mr. Neuhard had a brief discussion concerning the timeline to move forward. She stated, in her opinion, the process on the County side would not take much time once the application was received.

Mr. Coen and Mr. Neuhard had a brief discussion concerning the timeline.

Mr. Neuhard stated everything would be prepared, letters, packages and advertising, to start in January. He stated if the Committee felt the end of March was too early, it could be moved to the end of April.

Ms. Kurpiel stated in her opinion it should be moved and suggested working backward from the April 2010 date to set up the timeline.

Mr. Coen stated in his opinion the date was not April 2010. He stated to indicate the viability of the program by selling it as part of the bond referendum, so to him the date should be November 2009. He

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stated that was important to target that date to send out information to the public which stated this program works and landowners were interested.

Mr. Neuhard stated the Committee would have to be aggressive to meet that timeline and the application deadline would have to be March or April to make everything happen.

Ms. Clark stated even after the landowner turns in an application, they still could back out.

Mr. Neuhard stated absolutely.

Ms. Clark stated she did agree with Ms. Kurpiel, the people the applicants would really need to talk to would be almost impossible within a six week time period.

The Committee members had a brief discussion concerning the deadline for applications to be submitted.

Mr. Coen stated he thought the submittal date should be March or April to allow time for a second round if someone were to drop out. He stated if the process was not completed by November, the committee could still give the facts about interest in the program.

Mr. Apicella stated the landowner would have three months to submit an application and another three month period to have buyer's remorse to back out.

Mr. Coen stated January would be the roll out of the pilot program with a public meeting in late January or early February with applications submitted by the end of March.

Ms. Clark asked if anyone from Stafford County Farm Bureau had contacted staff regarding their annual meeting.

Mr. Neuhard stated no.

Mrs. Baker asked when the annual meeting was scheduled.

Ms. Clark stated October 11, 2008.

Mr. Apicella asked if Mr. Coen should send a letter as Chairman of the Committee requesting a presentation.

Ms. Clark stated at that meeting, the Farm Bureau will be having dinner, door prizes, business and a singing group. She stated a lot of thing would be going on at the meeting.

Mrs. Baker asked if there was a possibility of something being handed out.

Ms. Clark stated she would love to have something to hand out. She stated there would be about one hundred fifty people in a room that were mostly in A-1 zoning.

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The committee and staff had a brief discussion concerning the preparation of some information to hand out the Stafford County Farm Bureau annual meeting.

Mr. Coen stated the committee would move back up the agenda to the PDR workshop.

b. Report on DCR Workshop: Conservation & Open Space, Legal Considerations

Ms. Kurpiel stated the workshop was very interesting. She stated she learned that Stafford County does not have a choice, they must enforce the easement. She stated one of the participants stated they were planning \$60,000 for the up front cost for a land trust. She stated they would have to monitor that easement in perpetuity. She stated banks do not like to sub-ordinate their mortgages and price for the discount on the tax credit was up to eighty-two cents on the dollar. She stated there was an in-depth discussion concerning title insurance and the fact that any holder, including the county, would want title insurance. She stated that was expensive and asked if the Committee would want to investigate that option and how would it be paid.

Mr. Silver stated all it was doing was guaranteeing a clear title.

Ms. Kurpiel stated it would guarantee the priority of the easement over the mortgages that might exist and want to insure that there were no unknown heirs. She stated title companies will come in with boiler plate language which would take all rights away from the holder, so an attorney would have to review the policy. She stated it was a complex issue, but thought it would be good to start investigating. She stated she also learned selling the tax credit was a federally taxable event. She stated there were some very good PowerPoint presentations and she would try to get copies that could be distributed to the Committee. She stated there was also quite a discussion concerning easements that developers were willing to give, but would not be an issue for this Committee. She stated there was a requirement that the County sign and 8283, which gives the landowner the right to take the tax credits and basically stated the appraisal has been reviewed.

Mrs. Baker asked who would review the appraisal.

Ms. Kurpiel stated they were talking about the land holder, which would be Stafford County in this case. She suggested obtaining additional information concerning the 8283. She stated the workshop was very interesting and she had a folder full of presentations and would get copies to the Committee members.

c. State Matching Funds FY2009

Mr. Coen asked Mrs. Baker if she had anything else to say concerning the state matching fund.

Mrs. Baker stated she would be going to a PDR Managers meeting September 24, 2008 which would be holding a discussion concern the matching fund.

Mr. McClevey asked if the Commission was guaranteed the matching funds.

Mr. Neuhard stated yes.

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The committee and staff had a brief discussion concerning the funds and state matching funds.

d. TDR Article and Model Ordinance

Mrs. Baker stated there was no update the information was forwarded at the request of Mr. Milde. She stated the Committee was not tasked with, but Mr. Milde wanted the Committee to be aware that TDR was something some people were considering.

Ms. Kurpiel asked if that would be through the Planning Commission since it was a land use issue.

Mrs. Baker stated the Planning Commission previously established a sub-committee through the comp plan. She stated during that process, the Commission came to the conclusion that until the state legislation changed to allow banking and things like that, nothing would be done at this time.

Ms. Kurpiel stated at the state level there were some meeting and the minutes could be accessed online at the Virginia Town hall Website.

3. New Business

a. Proposed Bond Referendum

Mr. Coen asked if there was any additional information concerning the bond referendum, trying to move it forward.

Mr. Neuhard stated staff would talk to Bonnie Frantz and get some recommendations concerning timing for the bond. He stated the Committee would need to construct the question. He stated staff would work on some drafts and the CIP would be the next piece.

Mr. McClevey asked if the Free Lance Star would run the bond as a public notice.

Mr. Neuhard stated yes.

Mr. McClevey asked if that was just to state the language for the ballot.

Mr. Neuhard stated that was the required public legal notice that would be on the referendum.

5. Next Meeting

Mr. Coen stated he would like to set the next meeting and then discuss new business. He asked if there was any preference for the next meeting or to keep the format of the fourth Tuesday.

Mr. Neuhard stated prior to the next meeting staff would be working on information for October 11, 2008. He stated staff will be bringing back for the next meeting an update for the bond referendum after the discussion with Bonnie Frantz. He stated staff would start the process for the materials and perhaps start putting the package together for the Commission to review for the January start up.

Mr. Coen asked Mrs. Kurpiel if she wanted to discuss the landowner issue at the next meeting.

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Ms. Kurpiel stated that issue could wait. She stated she gave Mr. Schultis the name of a reference for a handbook of all the forms associated with a PDR program. She stated the cost was about \$40.00 but would save staff so much time to have what the land trusts have already used.

Mr. Schultis state he downloaded a lot of material, so when the time came for forms he would have it.

Ms. Kurpiel stated she was not sure the disc had everything on it and suggested Mr. Schultis call the association to see if the disc was comparable with the book.

Mr. Coen asked if the Committee wanted to try to obtain some basic information from the conservation partners. He stated he did not have a problem contacting them to obtain information.

Mr. Neuhard stated sure, the Committee was very interested.

Mr. Coen stated he would get some information.

Ms. Kurpiel stated they may be the salvation for people that do not want to pay the cost up front.

Mr. Coen stated the one question he would have would be if the landowner backs out, what would happen.

Mr. Apicella stated, in his opinion, it would be nice to speak to a county and a landowner who worked through this process, to get a sense of how it worked and what worked and what did not.

Mr. Neuhard stated something could be set up.

Mrs. Kurpiel stated perhaps Fauquier County could come in with a landowner.

Mr. Neuhard stated he would inquire and see when they would be available. He would send an email to the Committee to schedule a date.

The Committee had some discussion concerning the meeting dates and the up coming holidays. Mr. Neuhard stated he was sure the December date would have to be changed.

Mr. Coen suggested moving the November and December dates.

Mr. Neuhard stated that would be his suggestion.

Mr. Coen stated for new business he wanted to discuss the comment as someone from the State level said in order to receive the matching funds the land would have to be farmland. He stated there were many programs for land preservation that do not fall under the bailiwick of just this committee and seem to fall by the wayside. He stated there were different programs out there but no way to refer people. He stated he would like to throw out the idea of changing the focus and just being PDR, to also be land preservation so when something else would come along the Committee could deal with it rather than have it fall by the wayside or someone else trying to reinvent the wheel.

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Ms. Kurpiel stated she could provide everyone with a book called "Sources of Conservation" which was a handbook for landowners and non profit organizations. She stated it gives all of the programs in the State of Virginia.

Mr. Apicella stated he liked the idea and thought most of these programs could be inter-related. He stated that way anyone interested could get all the options that were available. He stated maybe if this program did not work for someone, another program would. He stated maybe approach the Board by stating we could generate this type of program and instead of saving "X" number of parcels with this program, but if we married up all these programs we could do a much bigger program and save land in Stafford County.

Mrs. Baker stated the Tri-County recommended that a few years ago and wanted to go forward with them handling that type of program, because they had the expertise.

Mr. Neuhard state a couple of things come to mind. He stated this Committee was based on an Ordinance and has a very specific scope. He stated the Committee has no full time staff and if the scope was broader, there would have to be a way to support that scope. He stated sometimes that would be easy and sometimes would need to be addressed in other ways. He stated if and when this committee gets the bond, the program will not operate without at least one staff person that could do this full time to keep up with the money and the correct legal things were being done. He stated if the Committee were to broaden the scope, you would have to go back to the Board and at this point it would be very difficult to support a broader scope. He stated what was described, from a staff perspective, would be a great approach, but right now that effort could not be supported.

Mr. Apicella stated if that were put to the Board, it might help stimulate more thought about how all the programs could be wrapped together. He stated there would be an up front cost, but in the long run would save land and money and would pay for itself. He stated he would recommend that the time was right to move forward with a more robust program.

Mr. Coen stated one of the things brought up was staffing. He stated if it were something that would help, say we need someone to specifically do this program. He stated, in his opinion, the ball keeps getting dropped on some of the other things that may be good. He stated this Committee had done an amazing amount of work in a short amount of time. He stated he thought opportunities were being lost.

Ms. Clark stated the fact was a lot of what has been done was from staff. She stated the Committee sits here and says, this was what we want and it falls in staff's lap. She stated staff has done an amazing amount of work also.

Mr. Neuhard stated he was not discouraging the Committee from taking a proposal to the Board, but today Mrs. Baker did not attend the workshop today because she had other things that had to be done. He stated the County was ten per cent down in staff and were getting ready to go through additional cuts. He stated staff was not in a position to support the Committees. He stated departments were being re-organized to do essential government services. He stated this was not a time and he was trying to save the PDR money. He stated if it were not for each one of the Committee members that bring information back to staff, it could not be covered. He stated staff was committed to the PDR Program and would do everything they could do to for the program, but if staff was asked to do much

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more it would take a directive from the Board and at the expense of something else and somebody would have to know what that expense would be. He stated the Committee would not find staff helping to advocate for a bigger scope.

Ms. Kurpiel stated the Committee should look at the information in the book and when they were speaking to landowners they could inform them of the other programs available.

Mr. McClevey stated when the Committee goes through the application process and the matrix of evaluating a piece of property, if there was something beyond the PDR Program we could inform the landowner of another program available or the program about the land.

6. Adjournment

With no further business to discuss, the meeting was adjourned at 8:22 p.m.